

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 2:20CR45-1
(Judge KleeH)

KENNETH ALLAN EVANS,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 58],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On March 24, 2021, the Defendant, Kenneth Allan Evans ("Evans"), appeared before United States Magistrate Judge Michael J. Aloia and moved for permission to enter a plea of **GUILTY** to Count Three of the Indictment, charging him with Intent to Distribute Methamphetamine, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C). Evans stated that he understood that the magistrate judge is not a United States District Judge, and Evans consented to pleading before the magistrate judge. This Court referred Evans's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

USA v. EVANS

2:20-CR-45-1

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 58],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

Based upon Evans's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Evans was competent to enter a plea, that the plea was freely and voluntarily given, that Evans was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 58] finding a factual basis for the plea and recommending that this Court accept Evans's plea of guilty to Count Three of the Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Evans nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [Dkt. No. 58], provisionally **ACCEPTS** Evans's guilty plea, and **ADJUDGES** him **GUILTY** of the crime charged in Count Three of the Indictment.

USA v. EVANS

2:20-CR-45-1

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 58],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Evans, and prepare a presentence investigation report for the Court;

2. The Government and Evans shall each provide their narrative descriptions of the offense to the Probation Officer by **April 30, 2021**;

3. The presentence investigation report shall be disclosed to Evans, his counsel, and the Government on or before **June 29, 2021**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence investigation report on or before **July 13, 2021**;

USA v. EVANS

2:20-CR-45-1

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 58],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

5. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **July 27, 2021**; and

6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **August 24, 2021**.

The magistrate judge released Defendant on the terms of the Order Setting Conditions of Release [Dkt. No. 13].

The Court will conduct the **Sentencing Hearing** for Evans on **September 9, 2021**, at **1:30 p.m.**, at the **Elkins, West Virginia** point of holding court. If counsel anticipates having multiple witnesses or an otherwise lengthy sentencing hearing, please notify the Judge's chamber staff so that an adequate amount of time can be scheduled.

It is so **ORDERED**.

USA v. EVANS

2:20-CR-45-1

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 58],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

The Clerk is directed to transmit copies of this Order to
counsel of record and all appropriate agencies.

DATED: April 20, 2021

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE